



# COPYRIGHT

## FACTSHEET ON COPYRIGHT AND PERSONAL DATA IN PORTRAIT PHOTOGRAPHY

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INTELLECTUAL PROPERTY  
OFFICE OF SINGAPORE



PERSONAL DATA  
PROTECTION COMMISSION  
S I N G A P O R E

1. The new **Copyright Act 2021** came into force on 21 November 2021. The Act will, among other changes to our law, give creators default ownership of all works they are commissioned to create. For example, a photographer will, by default, own the copyright to photographs he or she was hired to take, including for weddings and families. This default ownership rule is, and continues to be, subject to contract.<sup>1</sup>
2. This factsheet explains what you, as a client who is engaging a photographer, should know about this default ownership rule and what you can do to ensure you will be able to use the photographs for your intended purposes. If you are a photographer and wish to understand how the changes under the new Copyright Act will affect you, please go to <https://go.gov.sg/copyright2021-creators>.

#### **You can still own copyright to your photographs.**

3. This default ownership rule applies only if your contract does not say who owns the copyright. As many already do today, you and your photographer can and should agree in writing if you want to reverse this default position or provide for specific usage rights to the photographs. The changes in the Copyright Act will not affect contracts that have already been signed.

#### **You can use your photographs even if you do not own the copyright.**

4. Even if a photographer owns the copyright to your photographs, this does not mean that you as the client cannot use them. You have the right to use the photographs for the purposes for which they were commissioned. For example, a couple will be able to use their wedding photographs for their personal use, e.g. to upload on social media, or to share with friends and family. They do not need to own the copyright to the photographs in order to do so.

#### **Photographers cannot freely use your photographs even if they own copyright.**

5. Copyright ownership does not grant photographers free rein to use the commissioned photographs. Copyright owners remain bound by all applicable laws, e.g., personal data protection law, defamation law, and criminal law.<sup>2</sup>
6. In particular, the Personal Data Protection Act 2012 (PDPA) gives individuals control over how their personal data can be used by others. This means that even if photographers own the copyright to photographs, they must still obtain the consent from individuals featured in the photographs if they intend to use the photographs. For example, your wedding photographer is required to seek consent<sup>3</sup> from you and your wedding guests who are featured as the subject of the photographs (but not from others forming part of the scene who are incidental to the shot). Further, photographers cannot require individuals to provide consent beyond what is reasonable to provide their services (for example, the

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<sup>1</sup> The change in the law on default copyright ownership applies to all forms of commissioned works, and the contents in this document may apply to and be helpful for your use of other such works. For more information on copyright, please visit the IPOS webpage at <https://go.gov.sg/copyright-resources>.

<sup>2</sup> The application of other laws including personal data protection laws, apply to all forms of copyright works.

<sup>3</sup> This generally applies to portrait photography. Photographers may also rely on exceptions to the requirement of consent under the PDPA, such as the exceptions for news reporting, or capturing images that are publicly accessible during landscape and cityscape photography.

photographer cannot make it a requirement of a photography package that the wedding couple must agree to the photographer sharing their photographs with third parties such as wedding planners). Further, individuals can withdraw consent given earlier.<sup>4</sup> This helps to strike a balance in the creator-client relationship.<sup>5</sup>

7. We encourage parties in commissioning arrangements for portrait photography (e.g., wedding photography) to negotiate their rights and obligations, understand the extent of any consent given, and record these agreements in their contract. This will ensure that all parties are clear about their rights and will help prevent potential disputes in the future.

## **PRACTICAL TIPS WHEN NEGOTIATING PORTRAIT PHOTOGRAPHY CONTRACTS**

1. **Should you negotiate for copyright ownership of the photographs?**

You may wish to own the copyright to your photographs if you intend to use them commercially or for other subsequent purposes which go beyond ordinary personal use. Alternatively, instead of owning copyright outright, you may consider negotiating to restrict the usage rights of the photographer.

Do note that even if you negotiate to own copyright, you must credit the photographer when using the photographs in public (including on social media). A creator's right under the new Copyright Act to be identified when his work is used publicly is separate from copyright ownership, so you will need to obtain a written waiver or consent from the photographer if you do not wish to credit the photographer.

2. **What rights to the photographs should you negotiate for?**

As a client, you should ensure the contract expressly grants you rights for your planned uses (e.g., uploading on social media and making copies for family).

3. **What usage rights of the photographer should you consent to?**

Photographers often need to use their commissioned photographs to build their professional portfolios, to market their services, or publish in magazines or blogs. But if they wish to use portrait photographs, they must obtain your consent as such photographs constitute personal data. As a client, you should take note of consent clauses in the contract. If you do not agree to these clauses, you can negotiate to (a) only consent to particular uses, (b) require the photographer to request prior approval before each use, or (c) delete the clauses altogether. As explained in paragraph 6 above, photographers cannot require you to provide consent beyond what is reasonable to provide their services, and that even if you grant consent to the photographer to use your photographs, you can withdraw such consent subsequently.

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<sup>4</sup> Upon receipt of the notice of withdrawal of consent, the photographer is required under the PDPA to inform the individual of the likely consequences, if any, of the withdrawal of consent, and to cease all use and disclosure of the photographs.

<sup>5</sup> For more information on personal data in photography, video and audio recordings, please refer to Chapter 4 of the Advisory Guidelines on the Personal Data Protection Act for Selected Topics issued by the Personal Data Protection Commission at [www.pdpc.gov.sg](http://www.pdpc.gov.sg).

## SAMPLE CLAUSES FOR INTELLECTUAL PROPERTY RIGHTS AND PERSONAL DATA IN PORTRAIT PHOTOGRAPHY CONTRACTS

The sample clauses set out below are drafted broadly for general reference and purposes. These sample clauses typically form part of the commissioning contract. As such, they need to be adapted to suit the contract and reviewed to ensure that they meet your requirements. You are encouraged to seek professional legal advice if you are unsure or require assistance with the drafting of the terms in the contract for your particular purpose and context.

S/No.	Purpose	Sample clause (words in bold should be defined accordingly in the contract)
1.	For you (instead of the photographer) to own the copyright	<i>The <b>Photographer</b> assigns to the <b>Client</b> all copyright, titles, interests, and other rights in and to the <b>Work</b>, as conferred under the laws of any jurisdiction, for the use and benefit of the <b>Client</b> absolutely for the full period or periods of copyright protection, including all reversions, renewals and extensions, created or provided by the laws of any jurisdiction.</i>
2.	For you to ensure you can use your photographs for your intended purposes	<i>The <b>Photographer</b> grants to the <b>Client</b> the irrevocable right to use the <b>Work</b> for the following purposes: (a) to share the <b>Work</b> for non-commercial personal purposes, whether on social media or otherwise; (b) ... [to add on any other provision as appropriate]</i>
3.	For you to consent to the photographer using your photographs for profiling his work (eg. portfolio, competitions) <sup>6</sup>	<i>The <b>Client</b> provides consent to the <b>Photographer</b> to use the <b>Work</b> for only the following purposes: (a) including the <b>Work</b> in his commercial portfolio to be used to market his professional photography services to potential clients; (b) featuring the <b>Work</b> in any exhibition of the <b>Photographer's</b> other works; (c) ... [to add on or delete any other provision as appropriate]</i>  <i>The consent provided by the <b>Client</b> to use and disclose the <b>Work</b> for each of the purposes set out above will remain valid until such time it is withdrawn by the <b>Client</b> in writing.</i>  <i>Upon receipt of the <b>Client's</b> written notice to withdraw consent, the <b>Photographer</b> may require reasonable time<sup>7</sup>, for the <b>Client's</b> request to be processed and must notify the <b>Client</b> of the consequences of his/her withdrawal of consent.</i>
4.	For you to prevent the photographer from using your photographs for other purposes	<i>The <b>Photographer</b> shall obtain the <b>Client's</b> prior consent in writing before using the <b>Work</b> for any purpose for which the <b>Client's</b> consent has not already been obtained in writing (except where otherwise permitted or authorised by law).</i>

<sup>6</sup> This clause is not intended for situations where the photograph is taken for commercial purposes (e.g. the featured individual is paid to model for the photograph).

<sup>7</sup> As good practice, no longer than 10 working days.